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U.S. Acts to Renew 'National Security' Mail Monitoring

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The Postal Service announced plans yesterday to renew the monitoring of mail for "national security" reasons despite a federal court decision holding the practice unconstitutional.

The mail agency said it would overcome judicial objections that "national security" was too vague by issuing four definitions of the phrase.

Charles R. Braun, an assistant general counsel who drafted the proposed new rules for the service, said:

"If there was no national security mail cover program, the FBI might be inhibited in finding out if a nation was planning war against us."

A mail cover means that a letter carrier — usually at the request of the FBI — records the names, addresses, postmark and other data on envelopes addressed to or from particular persons in whom the law enforcement agency is interested.

The plans of the Postal Service brought an indignant response from Frank Askin, a general counsel for the American Civil Liberties Union and victor in the court battle outlawing "national security" covers.

Askin, a professor at Rutgers Law School, said that the agency is engaged "in an effort to circumvent by fiat a judicial decision they don't have the guts to take into [an appeals] court."

Whatever the quality of his courage, Braun did appear to break some new ground. In the preamble to his proposed new rules and printed in the Federal Register, the postal lawyer declared that the federal court decision was "erroneous."

Neither Braun nor ACLU lawyer Askin could recall so flat an assertion ever before appearing as an introduction to new rules.

The decision by Judge Lawrence Whipple in U.S. District Court in New Jersey held that mail covers were legitimate to investigate a criminal act or pursue a fugitive. But to justify the technique on "national security" grounds, he held, "is too ambiguous

and broad." It might tempt "an over-zealous public official" to investigate "unorthodox yet constitutionally protected political views."

Braun argued that Whipple erred in thinking that mail monitoring might chill anyone's free speech. The practices of the Postal Service, he wrote, are not "applicable to speech."

The case before Whipple was brought by a schoolgirl, Lori Paton, who in 1973 tried to write to the Socialist Labor Party for a high school project. She mistakenly sent the letter to the Socialist Workers Party whose mail was under a cover ordered by the FBI.

Lori's letter brought an FBI agent to her school and she sued for damages.

Whipple held that the "national security" reason lacked "precision" and it is just this that the Postal Service now attempts to supply.

Its new rules would define "national security" as a defense against "an attack or other grave hostile act; sabotage or international terrorism; clandestine intelligence activities or the conduct of foreign affairs or military policies in opposition to those foreign and military policies of the United States which are intended to protect the United States from the foregoing enumerated actual or potential threats."

The last catch-all clause, said Askin of the ACLU, would enable the government to "check the mail of organizations engaged in legitimate political activities protected by the First Amendment." Anti-Vietnam peace groups, he said, would fall under this rubric.

The public has 30 days to comment in writing on the new rules. Then the service can adopt them, modify them or go back to the drawing board.

Braun was unable to supply a tally of the number of mail covers now in force. In 1973, the most recent year for a full breakdown, there were 4,417 mail covers of which 260 were instituted for "national security" reasons.